

# Copyright law and the access to education and knowledge in the digital age

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## Valorisation Addendum

### 1. What is the social and/or economic relevance?

The significance of education and knowledge for individual and social development as well as for economic progress is undisputed. What is crucial and much debated is the access to education and knowledge, not only in industrialised countries but also an even more in developing and least developed countries, where large parts of the population live in poverty and illiteracy is a major problem. In that context education and knowledge are of fundamental importance in the fight against poverty and illiteracy. Improved access to education and knowledge is expected to foster social and economic development and enable developing and least developed countries to participate in the global knowledge society and economy.

Both educational establishments and libraries, archives and similar institutions use copyright protected works in order to provide their services and to enable access to education and knowledge. From that point of view a preferably unrestricted use of copyrighted works appears advantageous. However, since copyright law assigns the exclusive right to control any use of a copyrighted work to the author, who is interested in deriving (financial) profit from uses of his work and who therefore supports a more restrictive approach to copyright law, the access to education and knowledge may be limited by copyright law. This is not principally wrong and besides it is inherent to almost any copyright system. Yet, considering the significance of education and knowledge for overall social and economic benefit, it must be carefully analysed and examined how far the right of the author (and right holder) to control the use of a work may reach and under which conditions the right to control the use of a work has to stand back in favour of higher ranking interests.

With the advent of the digital age the issue of balancing interests fairly, which is essential to copyright law in order to both stimulate creation and to promote the dissemination of knowledge, has emerged with great urgency. The Internet and digital technologies have multiplied the possibilities to access copyright protected works. This is generally favourable with regard to access to education and knowledge. However, the extended possibilities to use copyright protected rights over the Internet and by means of digital technologies are not or at least not sufficiently reflected by current copyright regimes all over the world. Rather, the reaction to the digital change and its effects on copyright law is a protectionist one, supported mainly by authors and right holders. As a result, the possibilities to make the Internet and digital technologies useful for improving access to education and knowledge by educational establishments, libraries, archives and similar institutions are limited by restrictive copyright provisions and a onesided author-centered interpretation and application

of these norms. In particular, limitations and exceptions to copyright law often do not correspond with practical realities and necessities of providers of education and knowledge. That is why said institutions find themselves in considerable legal uncertainty and back away from uses of certain works for fear of committing copyright infringements to the detriment of access to education and knowledge. Considering the above said fundamental significance of education and knowledge this is an adverse development, which must be opposed.

Therefore, this study advocates for reforming international copyright law as well as national copyright limitations and exceptions, focussing on the use of digital media and the Internet for access to education and knowledge. As the results of the study show copyright limitations and exceptions are not adequately promoting access to education and knowledge, neither in developed nor in developing and least developed countries because numerous uses of copyrighted works for educational purposes and in libraries and archives are not in conformity with the respective national copyright law or it is at least unclear whether these uses infringe the law or not. The study thus argues that reforming copyright law both internationally and nationally is necessary in order to improve the access education and knowledge. With regard to developing and least developed countries, namely Brazil and Mozambique, the findings of the study suggest that access friendly copyright limitations and exceptions taking appropriately into account the possibilities of the Internet and digital technologies could be one important means to promote access to education and knowledge and thereby enhance social and economic development.

The relevance of the present study thus is, on the one hand that it comprehensively analyses the current state of copyright limitations and exceptions for educational purposes and libraries, archives and similar institutions with regard to international copyright law and as well with regard to national copyright laws in the USA, the UK, Germany, Portugal, Brazil and Mozambique. On the other hand, the study proposes solutions for adequate limitations and exceptions for the benefit of access to education and knowledge taking into consideration especially the situation in Brazil and Mozambique as well as in Portugal, the potentials of the Internet and digital technologies and the human right to education and to take part in cultural life.

The issues discussed in this study concern authors, right holders, educational establishments, libraries, archives, museums and other cultural heritage institutions as well as individuals seeking access to education and knowledge. The interests of stakeholders involved thus relate not only to social issues such as the access to education itself but also to economic issues like financial investments in the creation of copyright protected content by

right holders or the construction of (digital) libraries through educational establishments or other institutions. These issues are examined against the backdrop of the situation in developing and least developed countries in which broad access to education and knowledge is especially vital in order to promote development. But also in developed countries the issues of the present study are essential in terms of participation and equality as well as social, economic and scientific progress. Considering this a study of copyright law and access to education and knowledge is of high social and economic relevance.

## **2. To whom are the research results of interest?**

The results of this study can be useful to interest and lobby groups in the field of education and access to knowledge, for instance international and national associations of educational establishments or libraries as well as stakeholder organisations. Besides, educational establishments and libraries, archives and similar institutions may use the results of the country analysis as guidelines for the interpretation and application of the respective national copyright limitations and exceptions currently in force. Above that the findings may serve as a basis for decisions regarding investments of educational establishments and libraries, archives and similar institutions. Insofar the study provides legal certainty which might result in increasing investments in the educational and knowledge sector, for instance in the construction of digital libraries. Furthermore, policy and lawmakers, both on an international and national level, might use the results and in particular the proposed solutions as a basis for legislative initiatives and amendments, both at international and national level.

The results of the study might also be of interest for the respective stakeholders with regard to the ongoing discussions before the WIPO Standing Committee of Copyright and Related Rights (SCCR) concerning an international treaty for limitations and exceptions for educational, teaching and research institutions as well as for libraries and archives. Since the EU is discussing a fundamental copyright reform, the results of the study may as well be interesting for the EU legislator and the organisations and stakeholder groups involved in that process. Above that the results could be interesting for international organisations focusing on the Portuguese-speaking world, such as the Community of Portuguese Speaking Countries (CPLP), in order to intensify copyright related policies and co-operations in the field of access to education, knowledge and culture among member states of the CPLP.

Finally, the study examines the role of limitations and exceptions as a means of promoting social and economic development in general. It supports the approach of a more value and human rights oriented understanding of copyright law in general. The study applies this approach in concreto to the interpretation of copyright limitations and exceptions for access to

education and knowledge, in particular in Portugal, Brazil and Mozambique, and thereby demonstrates how a recalibration of the balance of interests in copyright law might be feasible. Thus the study is of value also from an academic point of view.

### **3. How can the research results be applied in practice?**

In particular in Brazil and Mozambique the results of the study of current copyright provisions privileging access to education and knowledge as well as the proposed solutions for adequate limitations and exceptions might be used by national policymakers and legislators in order to develop legislative initiatives for the purpose of reforming national copyright law. In Brazil this reform process has already started but meanwhile has stalled. Nevertheless, reforming Brazilian copyright law, especially limitations and exceptions, is absolutely necessary, since the current legal framework neglects the issue of access to education and knowledge completely. The results of the study are intended to help resume the reform process in Brazil and make a contribution towards a balanced, more value and human rights oriented copyright system. As regards Mozambique it is assumed that a more access related, user friendly and value oriented system of copyright limitations and exceptions for education and knowledge would have positive effects on social and economic development and thus is one important means in the fight against illiteracy and poverty. Further, it is assumed that broad access to education and knowledge enabled by updated copyright provisions would be beneficial to social and economic development. In addition, it is expected that fairly balanced copyright laws will increase the acceptance of copyright protection and thereby enhance domestic production of copyrighted works, which would be favourable for education and knowledge, especially in Brazil and Mozambique. Thus, the findings of the study might also contribute to a reform of Mozambican copyright law. Moreover, the results of the study could be useful in the context of building co-operations and knowledge exchange programs between (higher) educational institutions as well as between libraries, archives and similar institutions, in particular in Portugal, Brazil and Mozambique.

Furthermore, stakeholders in the USA, the UK and in Germany might have an interest in the results of the study. Especially the focus on the human rights dimension of access to education and knowledge in the field of copyright law as supported by this study may provide policymakers and legislators with another perspective on limitations and exceptions. Considering for instance the growing knowledge gap within industrialised countries a shift towards a more value and human rights based understanding of copyright law and limitations and exceptions for overall social and economic benefit appears necessary in order to counter societal and digital divide. In this regard the study might have an effect on relevant decisionmakers and thereby influence future copyright legislation.

#### **4. What is the innovative character of the research?**

So far, at least to the author's knowledge, there is no study that analyses copyright limitations and exceptions in Portugal, Brazil and Mozambique with regard to access to education and knowledge in the digital age. In particular, the conception of a common market or common area for copyright protected works in the field of education and knowledge between these countries has not yet been analysed. The study carves out the potentials of co-operations in these areas with special regard to the Internet and digital technologies. Also it provides a comprehensive evaluation of not only legal but also factual and political circumstances on which educational establishments, libraries, archives and other providers of education and knowledge may rely in case of future co-operations and/or investments. In addition, the study is innovative in so far as it lays the grounds for further research concerning copyright limitations and exceptions for access to education and knowledge in Portuguese speaking countries.

Above that, the study connects issues of access to education and knowledge in the digital age with policies for social and economic development in an in-depth analysis and examines the potentials of digital technologies and the Internet for providing access to education and knowledge in developing and least developed countries, which has not yet been done with regard to Portuguese speaking countries. In general, the study is one of the few if not the only, which examines copyright law in Portuguese speaking countries with special focus on limitations and exceptions. Research in this area of copyright law is scarce, although as the study shows the need for access to education and knowledge is particularly urging in countries like Brazil and Mozambique as well as in other Portuguese speaking countries, since most of them are developing and least developed countries. Thus, the study is innovative also in this regard.

#### **5. Schedule & Implementation**

The issues arising in connection with copyright law and education to access and knowledge have been debated controversially in the last years. WIPO is discussing a treaty concerning limitations and exceptions for educational purposes and libraries and archives. The European Union finds itself in the process of reforming European Copyright law. One essential part of the discussion is about limitations and exceptions for educational establishments and libraries and archives. In several countries reforms of the copyright systems are debated, too. The UK has quite recently reformed parts of the Copyright Designs and Patents Act, in particular the section for limitations and exceptions. In Germany, limitations and exceptions for educational purposes are discussed as well. A fundamental

copyright reform is necessary also in Brazil. Some efforts have been made but have come to a stillstand. Yet, the new Brazilian government may take up the thread again. All in all, the issue of copyright law and access to education and knowledge in the digital age is of great importance and highly topical. In view of the accelerating technological progress and an increasingly networked and globalised world, the need to adapt copyright provisions, in particular limitations and exceptions to these developments, therefore is of great social and economic importance.

The author plans to address the above said target groups quickly. The book, being already published, will be sent to relevant stakeholders. Since the study contains concrete proposals for legislative amendments, these ideas and findings might contribute to current discussions about reforming international and national copyright law with regard to access to education and knowledge. Besides, the German publisher of the study will promote the book to interested academics, institutions and authorities over his sales network. In addition, the author plans to offer the study or parts of it to publishers in Brazil, Portugal and Mozambique. The relevant parts of the study may as well be translated into Portuguese. Above that, the study will be made available online.